

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 32**

**SJ AUTOMOTIVE, LLC D/B/A LEXUS OF  
STEVENS CREEK**

**Employer**

**and**

**Case 32-RC-248601**

**MACHINISTS AUTOMOTIVE TRADES LOCAL  
1101, DISTRICT LODGE NO. 190**

**Petitioner**

**REGIONAL DIRECTOR'S DECISION  
AND DIRECTION OF ELECTION**

SJ Automotive, LLC d/b/a Lexus of Stevens Creek (the Employer), is engaged in the retail sale and service of automobiles at its 300 Martin Avenue and 1500 Coleman Avenue facilities in Santa Clara, California.<sup>1</sup> Petitioner Machinists Automotive Trades, Local 1101, District Lodge 190, affiliated with International Association of Machinists & Aerospace Workers, AFL-CIO, (the Petitioner) currently represents a bargaining unit of approximately 65 service technicians, apprentices, dispatchers, and lube technicians who work at the Facility. The collective-bargaining agreement between the Employer and the Petitioner covering the service technicians is effective from July 1, 2018 to June 30, 2021 (the Agreement). Petitioner seeks an *Armour-Globe* self-determination election to add nine parts employees to the existing recognized unit of 65 service technicians, apprentices, dispatchers and lube technicians. The Petitioner seeks to add: (1) retail parts specialists (sometimes described in the record as front counterpersons); (1A) wholesale parts specialists (which the Employer treats as a subset of retail parts specialists); (2) service parts specialists (sometimes described in the record as back counter specialists or back counterpersons); (3) shipping and receiving clerks; and (4) parts drivers.<sup>2</sup>

The Employer maintains that the petitioned-for retail parts specialists, back counterpersons, wholesale parts specialists, parts drivers and shipping and receiving clerks do not share a community of interest with the service technicians in the existing unit and share more of a community of interest with non-represented service advisors, such that the parts department employees should only be permitted to vote in an election for representation as a separate bargaining unit. The Petitioner contends that the specified parts department

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<sup>1</sup> The Martin and Coleman Avenue facilities have different addresses but are closely located a short walk from each other.

<sup>2</sup> *Armour & Co.*, 40 NLRB 1333 (1942); *Globe Machine & Stamping Co.*, 3 NLRB 297 (1937).

employees share a sufficient community of interest with the service technicians in the existing unit and that complete functional integration exists as between the parts department and service department, such that they should be jointly represented in a single bargaining unit. The Petitioner has indicated that it would seek to represent the parts department employees in a separate unit in the event its request for an *Armour-Globe* self-determination election were denied.

A hearing officer of the Board held a hearing in this matter on October 1, 2019. Petitioner and the Employer appeared at the hearing and the parties filed timely post-hearing briefs with me, which I have duly considered. As evidenced at the hearing and on brief, the sole issue before me is whether the parts department employees should be allowed to vote in an *Armour-Globe* election to determine if they wish to be included in the existing unit of the Employer's various service employees already represented by the Union.

I have carefully considered the evidence and the arguments presented by the parties on this issue. For the reasons set forth below, I find, contrary to the Petitioner's position, that although the parts department employees constitute an identifiable, distinct segment so as to constitute an appropriate voting group, the parts department employees do not share a sufficient community of interest with the service technicians in the existing unit. I am therefore directing an election among the parts department employees only.<sup>3</sup>

### **THE EMPLOYER'S OPERATIONS**

The Employer is engaged in the sale of new and used automobiles at its facility located at 3333 Stevens Creek Boulevard in San Jose, California. The Employer is further engaged in the service of new and used automobiles at its main service facility at 300 Martin Avenue in Santa Clara, California and its service annex facility at 1500 Coleman Avenue in Santa Clara, California. The Employer is part of the Penske Motor Group which is comprised of five automobile dealerships, four of which are located in California and one of which is in Texas. The Employer employs approximately 200 employees and its operations are divided into separate sales, finance, parts, and service departments. Approximately 160 of the employees work at the Martin Avenue facility. The sales and finance departments are located at the Stevens Creek facility. The main parts and service departments are located at the Martin location. The service department at the Martin Avenue facility contains 38 work areas known as stalls approximately 15 feet in length for the Employer's service technicians to service vehicles, and there are 10 such stalls at the Coleman Avenue facility. The Martin Avenue facility primarily services customer vehicles paid for by customers whereas the Coleman Avenue facility primarily services "internal" vehicles (e.g., used cars which the Employer is repairing or improving in anticipation of resale), but the Coleman Avenue facility also handles any overflow of customer vehicles when the Martin facility is full or when internal work at the Coleman Avenue facility has been completed. Manufacturer's warranty work is

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<sup>3</sup> The parties stipulated that the voting group consisting of retail parts specialists, back counterpersons, wholesale parts specialists, parts drivers, and shipping and receiving clerks constitute an identifiable, distinct segment so as to constitute an appropriate voting group.

performed at both the Martin and Coleman Avenue facilities on a daily basis. The Employer works in close connection with other Lexus facilities by delivering or picking up parts from those facilities.

Jared Miller is the Vice President and General Manager who oversees the Employer's entire operation. The Employer's service department has two service managers (Jerry Lucas and Duncan Struthers) and a service supervisor (Brett Wakeman) who reports to Service Manager Lucas.<sup>4</sup> Service Managers Lucas and Struthers report directly to General Manager Miller. The Employer's parts department is headed by Parts Manager Andy Aguilar with Assistant Parts Manager Alan Kruger reporting to Aguilar. Like Lucas and Struthers, Aguilar reports directly to Vice President and General Manager Miller. The shipping and receiving manager position is currently vacant but the Employer is seeking to hire for this position.

### **SERVICE ADVISORS**

The Petitioner does not seek to add service advisors to the existing service technicians unit. However, an explanation of the service advisors' function is necessary in order to understand the Employer's overall operations, particularly since service advisors are the first persons encountered by members of the public who visit the Employer's service facilities. The Employer's service advisors are responsible for interfacing with the customers regarding services performed on their vehicles. The service advisors meet directly with customers to discuss their concerns and the services or repairs required for their automobile. Based upon those discussions, the service advisors draft and electronically create repair orders (sometimes described in the record as RO's) regarding the repairs needed on the vehicles and the customer concerns that need to be investigated by the service technicians. The repair orders are authorized by the customers and given to the dispatcher, who assigns the work to a service technician according to his or her skill level and expertise for service, repair and/or diagnosis of repairs needed. Service advisors communicate with both the service technicians and the customers regarding any issues discovered by the service technicians and their recommendations regarding additional repairs needed on the vehicles. Service advisors may communicate directly or electronically, using a program called CDK Service Edge, with the service technicians regarding these issues.

### **SERVICE TECHNICIANS**

The Employer's already represented service technicians, in conjunction with the already represented lube technicians, apprentices, and dispatchers, are responsible for maintaining, diagnosing, and repairing customers' automobiles. The Agreement sets the terms and employment for the service technician unit. The Employer employs technicians of varying skill sets, including some veteran or journeymen technicians who are able to perform all types of automobile maintenance and repair work and apprentices and lube technicians who perform

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<sup>4</sup> A third service manager, Todd Rebhan, supervises only the service advisors who are not part of the existing unit and who Petitioner does not seek to include by way of an *Armour-Globe* election.

less complicated maintenance and repair work. The four levels of technician classification (from least to most skilled) are pre-certified technician, certified technician, senior certified technician, and master certified technician.<sup>5</sup> As part of the repair and servicing of customer vehicles, service technicians engage in multipoint inspections in which they may notice other defects or problems not initially noticed by or known to the customer, which can then lead to the opportunity of an “upsell” to the customer of additional parts and services, which are then memorialized in an additional service recommendation or “ASR”. The wages, schedules, and other terms and conditions of employment of service technicians are discussed below.

## **THE CLASSIFICATIONS SOUGHT TO BE ADDED**

### **1. RETAIL PARTS SPECIALISTS/FRONT COUNTERPERSONS, INCLUDING 1(A) WHOLESALE PARTS EMPLOYEES**

Retail parts specialists, also known as front counterpersons, are responsible for selling parts to the Employer’s retail customers over the counter and through on line and telephone sales. Retail parts specialists work at the retail parts counter in the front lobby area of the Martin facility, unlike the other parts department employees who primarily work in the parts department. The retail parts specialists sell parts to customers who wish to perform their own repairs and servicing at home. The record evidence suggests that the retail parts specialists, as contrasted with the service part specialists, have little to no interactions with service technicians.<sup>6</sup> Two of the persons shown on Employer’s Exhibit 1 under the heading retail parts specialists, Juan Rangel and Patty Perez, actually specialize on a full-time or part-time basis in wholesale parts sales. The wholesale parts specialists field calls and perform other work in the parts department near the shipping and receiving area. The wages, schedules, and other terms and conditions of employment of retail parts specialists are discussed below.

### **2. SERVICE PART SPECIALISTS/BACK COUNTERPERSONS**

The service part specialists are responsible for providing parts to the service technicians. As discussed elsewhere herein, the service parts specialists work in the parts department at the Martin facility and deliver parts to a central distribution point in the service department for use by service technicians in repairing vehicles. The service parts specialists also sometimes deliver parts directly to service technicians at the stalls at which the service technicians are working. However, Vice President and General Manager Miller testified that service part specialists spend less than five percent of their day in the service department

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<sup>5</sup> The Employer also employs three diagnostic specialists as part of the already represented service technician unit. The diagnostic specialists are responsible among other things for diagnosing particularly complicated repairs, dealing with “comebacks” (where a customer brings back a vehicle after a prior Employer repair was unsuccessful), and for going on repair-related test drives with customers.

<sup>6</sup> Parts employee Eric Garcia, who has served as a retail parts specialist, service part specialist, shipping and receiving clerk, and parts driver, testified to having considerable interactions with service technicians but he did not specify in his testimony whether that occurred in his capacity of service part specialist, retail part specialist, parts driver, or shipping and receiving clerk.

where the service technicians work. The record reflects substantial interactions between service part specialists and service technicians both in the parts and service departments with respect to the availability and appropriateness of particular parts for service and repairs. Such interactions are face-to-face, electronic, and by telephone. The services performed by the back counterpersons at the Coleman facility include functions performed by shipping and receiving clerks at the Martin facility. The wages, schedules, and other terms and conditions of employment of service part specialists are discussed below.

### **3. SHIPPING AND RECEIVING CLERKS**

Shipping and receiving clerks are responsible for shipping, receiving, and inventorying parts from Lexus as manufacturer or other parts vendors. The shipping and receiving clerks use scanners and are considered part of the parts department. While the Employer submits in its brief that the shipping and receiving clerks are “virtually never in” the service department in which the service technicians conduct most of their work, the job description for the shipping and receiving clerk position states that shipping and receiving clerks pull and deliver parts to service technicians when necessary. However, the job description does not list any other duties or functions of shipping and receiving clerks that require or entail any interactions with service technicians. Neither party called a shipping and receiving clerk as a witness in the case.<sup>7</sup> The wages, schedules, and other terms and conditions of employment of shipping and receiving clerks are discussed below.

### **4. PARTS DRIVERS**

Parts drivers use an Employer vehicle to pick up and deliver parts and equipment to customers, wholesale accounts, vendors, other Lexus dealers, and outside automotive repair shops. There is no evidence reflected in the parts driver job description produced by the Employer or elsewhere in the record of there being any interactions between service technicians and parts drivers, as contrasted with the interactions between service technicians and service parts specialists. Neither of the witnesses subpoenaed by the Petitioner, service technician Craig Coffey and retail parts specialist Eric Garcia, testified to having any interactions with parts drivers. The parts drivers only rarely visit the Employer’s new car sales facility on Stevens Creek Boulevard. The parts drivers technically work in the parts department although much of their time is spent on the road.

## **BOARD LAW**

The applicable standard for evaluating the appropriateness of adding additional employees to a preexisting bargaining unit is the Board’s *Armour-Globe* doctrine. Under the *Armour-Globe* doctrine, employees sharing a community of interest with an already

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<sup>7</sup> As previously noted, parts employee Eric Garcia did not testify as to how long he served in the shipping and receiving clerk position nor whether the duties he testified to were part of the shipping and receiving clerk position or instead one or more of the other positions in which he served such as retail parts specialist, service part specialist, or parts driver.

represented unit of employees may vote whether they wish to be included in the existing bargaining unit. *NLRB v. Raytheon Co.*, 918 F.2d 249, 251 (1<sup>st</sup> Cir. 1990). An incumbent union may petition to add unrepresented employees to its existing unit through an *Armour-Globe* election if the employees sought to be included share a community of interest with unit employees and “constitute an identifiable, distinct segment so as to constitute an appropriate voting group.” *Warner-Lambert Company*, 298 NLRB 993, 995 (1990); *St. Vincent Charity Medical Center*, 357 NLRB 854 (2011). A certifiable unit need only be an appropriate unit, not the most appropriate unit. *International Bedding Company*, 356 NLRB 1336 (2011), citing *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950), *enf’d*, 190 F.2d 576 (7<sup>th</sup> Cir. 1951). See also *Overnite Transportation Co.*, 322 NLRB 723 (1996) (the unit sought need not be the ultimate, or the only, or even the most appropriate unit). If the petitioned for unit is appropriate, then the inquiry into the appropriate unit ends. *Boeing Co.*, 337 NLRB 152, 153 (2011).

While the petitioned-for employees need not constitute a separate appropriate unit by themselves in order to be added to an existing unit, as noted above, the parties stipulated at the hearing that the parts department employees constitute an appropriate unit. In light of this stipulation, which I find to be supported by the record evidence, it is clear that the parts department employees constitute an identifiable, distinct segment so as to constitute an appropriate voting group. See *Warner-Lambert Company*, *supra*. Thus, the only remaining inquiry is whether the parts department employees share a community of interest with the currently represented service department employees. Such an analysis involves reviewing several factors and comparing the disputed employees to determine whether they share a sufficient community of interest to be included in the same unit. Typical factors to be considered include the nature of employee skills and functions, common supervision, interchange and contact among employees, the degree of functional integration, the work situs, centralized control of labor relations, commonality of wages, hours, and working conditions, bargaining history, and the extent of organization. *United Operations, Inc.*, 338 NLRB 123 (2002); *International Bedding Company*, *supra*, at 1337; *Boeing Co.*, *supra*, at 153; *NLRB v. Paper Manufacturers Co.*, 786 F.2d 163, 167 (3d Cir. 1984); *Rinker Materials Corp.*, 294 NLRB 738, 738-739 (1989). While a petitioner’s position regarding the scope of the unit is also a relevant consideration, a petitioner’s position is not dispositive with regard to what constitutes an appropriate unit, and certain proposed units, such as those based on an arbitrary, heterogeneous or artificial grouping of employees will be found to be inappropriate. *International Bedding*, *supra*, citing *Marks Oxygen Co.*, 147 NLRB 228, 230 (1964); *E.H. Koester Bakery Co., Inc.*, 136 NLRB 1006, 1012 (1962); *Moore Business Forms, Inc.*, 204 NLRB 552, 553 (1973); *Exemplar, Inc.*, 363 NLRB No. 157, slip op. at 6 (2016) (extent of organization cannot be given controlling weight).<sup>8</sup> In addition to these traditional community

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<sup>8</sup> Given that this is an *Armour-Globe* case, I have primarily analyzed the facts pursuant to the *Warner-Lambert* standard discussed above rather than under the Board’s more recent decision in *PCC Structurals, Inc.*, 365 NLRB No. 160 (2017), which overruled *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011). The Board has indicated that *Specialty Healthcare* was not the correct standard for determining whether an *Armour-Globe* self-determination election was appropriate, and this remains true after *PCC Structurals*. See *Republic Services of Southern Nevada*, 365 NLRB No. 145, slip op. at 1, fn. 1 (2017); *South Texas Project Nuclear Operating Company*,

of interest factors, I also assess and compare the compensation methods for the service department employees and the parts department employees as well as the shifts and schedules of the service department employees and the and parts department employees.

## **APPLICATION OF BOARD LAW TO THIS CASE**

### Employee Compensation

The already included service technicians are paid on a flat-rate basis, dictated by the hours it takes the technicians to complete a job as compared to the amount of time allotted for the job by Lexus. Thus, for example, where Lexus has determined that a particular task should take two hours to complete, but the service technician completes the job in one hour, the service technician is paid the two-hour rate and can earn additional money by working on another job during the remaining allotted hour. Conversely, if the service technician takes longer to complete a job than the allotted or “flagged” time, the service technician is still only paid the rate for the allotted time and is not compensated for the additional time that it takes to complete the job. The service technicians are paid on a weekly basis.

The front counterpersons/retail parts specialists (Patty Perez, Jaimie Armas, Juan Rangel and Eric Garcia) are paid on an hourly basis plus commissions for parts sold. Of these four, Juan Rangel and Patty Perez focus on wholesale parts sales to body shops, independent automotive repair shops, and customers other than the individual Lexus drivers who occasionally purchase retail parts from the Employer. Thus, some of the commissions payable to Rangel and Perez are derived from the wholesale parts sales of the entire wholesale parts department. The parts drivers (Michael Burriesci and Axel Cruz) and shipping and receiving clerks (unnamed in the record) are paid on an hourly basis.<sup>9</sup> The service parts specialists/back counterpersons (Alejandro Padilla, Samantha Gammell, and Alfredo Hernandez Martinez) are paid on an hourly basis and do not receive commissions. The hourly parts employees are paid weekly whereas the commissioned retail parts specialists are paid twice a month.

Vice President and General Manager Miller testified that the wages of most parts department employees are only slightly lower than the wages of lube technicians in the existing unit. He similarly stated that some of the apprentice and journeyman service technicians were paid at the same rate of pay as parts department employees. Thus, given that the service technicians are paid on a flat rate basis while some of the parts employees are paid on commission versus other parts department employees being paid hourly, but given that some service technicians and parts employees earn roughly equivalent salaries overall, I find

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2014 WL 5465003 (footnote of Member Johnson finding it inappropriate to apply *Specialty Healthcare* to determine whether a self-determination election is appropriate). However, I have considered *PCC Structural*s and its progeny insofar as they address general community of interest principles applicable in any representation case, including *Armour-Globe* cases.

<sup>9</sup> The shipping and receiving clerk or clerks is/are apparently unnamed in the record because the Employer does not currently employ any shipping and receiving clerks and is instead currently utilizing parts drivers and/or back counterpersons to perform shipping and receiving functions.

that the factor of employee compensation is a neutral factor in assessing the existence of a community of interest between the parts employees and the service technicians in the existing unit.

### Employee Schedules and Hours

The standard work schedule for service technicians at the Martin facility is 7:00 a.m. to 5:30 p.m. with a choice of a 30 minute or one-hour lunch. The lube technicians at the Martin facility begin their shifts at 8:00 a.m. The service technicians at the Martin facility typically work 4/10 schedules meaning four days per week for ten-hour days. However, like the parts employees, the service technicians at the Coleman facility work 5/8 schedules, meaning five days per week for eight-hour days. Parts department employees start their shifts at 7:00 a.m. but some may start as late as 10:00 a.m. in order to cover the retail parts sales operation which remains open until 7:00 p.m. each weekday. The parts employees take one-hour lunches. The shipping and receiving clerks and parts drivers start at either 7:00 a.m. or 8:00 a.m. While parts employees generally work eight-hour shifts, parts employees can be required to work overtime when the Employer is understaffed. The service technicians receive holidays specified in the Agreement, but there is no evidence in the record with respect to whether the holidays enjoyed by hourly parts personnel correspond with the holidays for service technicians under the contract. The record evidence suggests that service technicians may leave before the ends of their shift if they complete their work before their designated end time, whereas parts employees must remain present for the entirety of their shifts.

Given that parts department employees and service technicians work different shifts with different start and end times, yet the Employer requires that parts department employees be scheduled in such a way as to overlap with service technicians and thus be available to assist them, I find this to be a neutral factor in assessing the asserted community of interest between the parts department employees and the service technicians.

### Nature of Employee Skills and Functions

The parts department employees and the service department employees perform distinctly different functions for the Employer. The Employer does not cross-train service technicians on parts department jobs or vice versa. While isolated instances in the record establish that both parts employees and service technicians receive certain trainings in San Ramon, California and attend certain trainings together, the bulk of the record establishes that service technicians receive extensive technical training offered by Lexus in Irvine, California while parts department employees receive much of their training on line.<sup>10</sup> Further, parts department employees also receive trainings on forklifts and Department of Transportation safety regulations whereas there is no evidence in the record that service technicians attend or

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<sup>10</sup> While certain trainings on-line are made available to service technicians as well, there is no evidence in the record to suggest that the on-line trainings received by or available to service technicians are the same on-line trainings received by or available to parts employees.



receive such trainings.<sup>11</sup>

More importantly, there is no evidence of parts department employees performing the type of complex mechanical work regularly performed by service technicians.<sup>12</sup> While the CDK Service Edge electronic communications system is available to all employees, the parts department employees access different aspects of it than do the service technicians.<sup>13</sup> The parts department employees and service technicians do not share the same telephones or computer devices. The service technicians utilize certain types of equipment (e.g., vehicle lifts, engine jacks, tire machines, tire balancers, alignment racks, and alignment machines) not generally utilized by parts department employees. Similarly, part department employees utilize certain types of equipment (e.g., scan guns, scanners, ladders, and forklifts) not generally utilized by service technicians. While employees in the service area must wear the same types of protective safety equipment (e.g., safety glasses and non-slip shoes) regardless of whether they are service technicians or parts employees, they only must do so when in proximity to service stalls and vehicles and not in all areas of the service department. Most tools, as distinguished from parts, used by service technicians are available in the tool room which is part of the service area, without any need for such tools to be obtained from the parts department, the only apparent exceptions being certain specialized tools, such as clamps on CV boots and epoxy guns which must be obtained from the parts department. The technicians regularly refer to a system for looking up manufacturer's bulletins called "TIS" whereas the parts department employees regularly consult electronic parts catalogues. While service technicians and service part specialists sometimes collaboratively review parts diagrams, there is no evidence that any parts employees review TIS or that service technicians review parts catalogues.

Given these dissimilar trainings, functions and resources, I find that the nature of employee skills and functions strongly cuts against a finding of a community of interest between the petitioned-for parts employees and the existing unit service technicians in this case.

#### Common Supervision

As noted above, the parts department employees report to Parts Manager Andy Aguilar and Assistant Parts Manager Alan Kruger. The service technicians report to Service Managers Jerry Lucas and Duncan Struthers and Service Supervisor Brett Wakeman. While both

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<sup>11</sup> While there is evidence in the record that one service technician is certified to use a forklift, there is no evidence in the record that service technicians are regularly required to use forklifts in order to perform their normal duties, in contrast to at least some parts department employees.

<sup>12</sup> I consequently do not rely upon *Austin Ford, Inc.*, 136 NLRB 1398 (1962), as cited by Petitioner in its post-hearing brief. I find that the evidence in that case that parts employees exercised technical mechanic skills, including dismantling engines and transmissions to obtain necessary parts renders *Austin Ford* inapplicable to the facts of the instant case.

<sup>13</sup> Petitioner's witnesses did not in any way rebut the Employer's evidence that an employee's job classification tends to dictate which areas of the CDK Service Edge information that employee has the ability to access or regularly utilize.

Aguilar and Lucas report to Vice President and General Manager (and sole Employer witness) Miller, there is a complete absence of common first line supervision as between the parts employees and the service technicians. While I note the existence of cases finding a community of interest between service and parts employees despite a lack of common supervision,<sup>14</sup> I note that such cases involved incipient organizational drives rather than *Armour Globe* elections, and further that in *Howell Chevrolet* at 1191, the employer-proposed unit would have included some mechanics but excluded others. Nor do I rely upon *Aztar Indiana Gaming Company, LLC d/b/a Casino Aztar*, 349 NLRB 603 (2007). While the Board in *Casino Aztar*, 349 NLRB at 607 n. 11 made clear that separate supervision in and of itself does not mandate separate units, I find *Casino Aztar* to be distinguishable because there was significant evidence of interchange in that case between the petitioned-for beverage subdepartment and the larger employer food and beverage department sought by the employer in that case, as contrasted with the complete absence of interchange between service technicians and parts department employees in the instant case. See also *Executive Resources Associates*, 301 NLRB 400, 402 (1991) (in examining supervision, most important is the identity of supervisors who have the authority to hire, to fire or to discipline employees or to supervise the day-to-day work of employees).

Thus, while I acknowledge the commonality of upper level supervision in the form of Vice President and General Manager Miller having ultimate control of all departments at the dealership, I find that the absence of common first line supervision of parts employees and service technicians is a factor cutting against Petitioner's petitioned-for unit.

#### Degree of Functional Integration

I find that the record supports a finding that a substantial degree of functional integration exists between the petitioned-for parts department employees and the already included service technicians. The service technicians are in regular contact with parts department employees on both a face-to-face and electronic basis. Not surprisingly, the vast majority of services and repairs performed by service technicians require at least one part. The record establishes that service technicians frequently consult with parts department employees about the appropriateness and availability of parts. Such interactions occur both in the parts and service departments, and that the work of service technicians is heavily dependent upon continual assistance and parts from parts department employees. The earning potential of service technicians paid on a flat rate basis directly depends on the efficiency of the parts department in getting parts to the service technicians on a timely basis.

Employees in both departments are simultaneously engaged in providing the essential product of the Employer's service department, namely, the service and repair of customer vehicles. While employees in each position perform a different facet of the service and repair

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<sup>14</sup> See *Howell Chevrolet Co.*, 89 NLRB 1189, 1190 (1950) (petitioner's requested unit of service and parts employees appropriate notwithstanding separate supervision of service and parts employees); *Wray Brothers*, 89 NLRB 592 (1950).

of customers' vehicles, I find that these employees comprise a functionally integrated group engaged in a singular pursuit. See *Harry Brown Motor Company*, 86 NLRB 652, 654 (1949) (perfectly clear that service departments are heavily dependent upon the parts departments and cannot function without them; sale of parts to general public by parts department employees did not destroy community of interest between parts employees and service employees). Here, I also note that the Employer stipulated on the record to the functional integration of the entire dealership.

The record reflects that each position is dependent upon the work of the other position to fulfill its essential job function. In this regard, the service advisors meet with each customer to go over potential issues and repairs of their vehicles and prepare repair orders documenting the work authorized by the customer. Service technicians perform the work outlined on the repair order. Any variations to the repair order, questions about the repair order, or additional repairs found necessary by the service technicians, must be communicated to the service advisors, who are then tasked with contacting the customer to discuss the issue and obtain authorization from the customer before the technician can perform the needed repairs. Thus, the positions must communicate with each other regularly throughout the course of their work and each is dependent upon the work of the other in order to fulfill their own responsibilities. Although the parts employees and service technicians both use the same computer system and have knowledge of the vehicle repairs and services provided by the Employer, there is no overlap in the functions that each perform.<sup>15</sup>

While employees employed in each position work in a distinct area of the Employer's facility, the service department is adjacent to the parts department and is connected by at least one door which is in virtually constant use. Even though employees employed in each position work slightly different shift configurations, the shifts available to those employees overlap so that there is coverage from both parts employees and service technicians during each regular work day.

For these reasons, I find that the factor of functional integration supports the petitioned-for unit in this case. Cf., *The Boeing Co.*, 368 NLRB No. 67, slip op. at 6 (2019) (functional integration is only one factor in the community of interest analysis).<sup>16</sup>

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<sup>15</sup> While the Employer sought to elicit testimony from service technician Craig Coffey that his interactions with service advisors were lengthier than his interactions with parts employees, Coffey forcefully adhered to his testimony that he had significantly more interactions with parts employees than with service advisors and that he was able to complete many repairs without needing to go back for any consultations with service advisors whatsoever.

<sup>16</sup> In finding that the functional integration factor favors Petitioner in this case, I do not rely upon *Ryder Integrated Logistics, Inc.*, 329 NLRB 1493, 1499-1500 (1999) as cited by the Employer in its brief. While *Ryder* downplayed the significance of the functional integration factor in isolation, *Ryder* was an accretion case whereas the instant case raises an *Armour-Globe* election issue rather than entailing any alleged accretion without an election. *Ryder* is further distinguishable insofar as it relied upon the "minimal and rare contact" between drivers and warehouse loaders which stands in contrast to the frequent contact between service technicians and service part specialists discussed elsewhere herein.

### Interchange Among Classifications

The record is devoid of evidence of employees who have moved between the service technician position and any parts position on either a temporary or permanent basis. Given the complete lack of interchange on a temporary or permanent basis, I find that the interchange factor strongly favors the Employer's position with respect to the lack of community of interest between the parts employees and the existing service technicians unit.

### Contact Between Employees

While I have accorded substantial weight to the complete lack of interchange, I now must also assess the evidence of work-related contact between the service technicians and the parts employees. See, e.g., *Boeing*, supra, 368 NLRB No. 67, slip op. at 5 ("contact is the only factor that unreservedly favors the petitioned-for unit").

With respect to employee meetings, the record reflects that the parts employees do not attend the monthly (two days consecutively) service technicians' meetings nor do the service technicians attend the monthly parts department meetings.<sup>17</sup> All employees are required to attend daily "Penske Way" meetings in which 20 different rotating topics are discussed. However, the opportunities for interaction between parts employees and service technicians at such Penske Way meetings are limited given that such meetings only last about five minutes.

The record also contains evidence of daily interactions between certain parts employees and service technicians with respect to locating and procuring the necessary parts with which to complete repairs. As noted above, all levels of service technicians, from the most to the least skilled, appear to regularly interact with service part specialists and visit the parts department.<sup>18</sup> The interactions between service technicians and service parts specialists occur in a myriad of forms including face-to-face, electronic, and by telephone, all of which deserve equal weight in my view.<sup>19</sup> However, and importantly, the record is devoid of evidence of regular interactions between service technicians and the other petitioned-for parts department employees of retail parts specialist, shipping and receiving clerk, and parts drivers.

It is true that the parts department employees regularly deliver parts to a central

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<sup>17</sup> While both parts employees and service technicians also attend quarterly safety meetings, there is no evidence in the record with respect to the nature of such safety meetings or how much interaction takes place between parts employees and service technicians at such meetings.

<sup>18</sup> While the Employer expresses doubt about the frequency with which service technicians visit the parts department by speculating that hanging out in the parts department would be an unproductive use of a service technician's time, the record equally if not *a fortiori* supports the conclusion that service technicians visit the parts department not to chat with parts employees about non-work subjects but instead to potentially obtain necessary parts more quickly than if the service technicians were to wait for a parts employee to place the part in the central distribution point.

<sup>19</sup> No party has directed my attention to any case holding that only face to face contact between employees in particular job classifications counts for purposes of evaluating community of interest.

distribution point from which the service technicians can retrieve them.<sup>20</sup> This central distribution point is in the middle of the service department surrounded by the stalls at which service technicians work. Further, in addition to the need for parts department employees to visit the service department in order to place parts at the central distribution point, the record also established that there are occasions when parts needed by service technicians are not available at or from the central distribution point, either because the parts employees have been too busy to stock the central distribution center or because the type of part or item (e.g., freon, batteries, navigation update software) is not customarily placed at the central distribution point, thus requiring the service technicians to visit the parts department to obtain the necessary part(s). The record also supports the conclusion that service technicians visit the parts department to obtain necessary parts when an incorrect or improper part is delivered to the central distribution point by a parts department employee, or when the need for a part is urgent because the customer is waiting around for the service of their vehicle to be completed. Service technicians also visit the parts department in order to return warranted parts removed from vehicles for such parts to be stored in the parts department prior to being returned to the manufacturer so that the manufacturer will pay for the repair and thereby honor the warranty. Conversely, parts employees sometimes visit service technicians at their stalls when special order parts arrive that the parts employees know the service technicians have been waiting for.

The Employer argues on brief that the Board should not rely upon the testimony of master service technician Craig Coffey with respect to his frequent visits to the parts department because the stall in which Coffey regularly works is closer to the parts department than are the stalls of other service technicians who may have fewer occasions to visit the parts department. I am inclined to reject the Employer's argument given both that Coffey testified with respect to the typicality of his experiences with respect to service technicians and that the Employer failed to avail itself of the opportunity to call and examine another service technician in an effort to establish that Coffey's experience was unusual rather than typical. Moreover, I note that Coffey provided un rebutted testimony that during his regular visits to the parts department he would frequently observe other service technicians already present.<sup>21</sup> On cross-examination, Miller admitted that service technicians sometimes visit the parts department in order to expedite the receipt of a part necessary to perform a repair. Coffey's testimony with respect to visiting the parts department in order to obtain parts more quickly also logically makes sense given that the service technicians are paid on a flat rate basis pursuant to which they can earn more money if they complete a job in less than the time allocated for it.

I also find it significant that the Employer's own job posting for a parts specialist position has several references to interactions between parts specialists and service technicians including

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<sup>20</sup> Employer General Manager Miller testified that there are occasions in which parts employees directly deliver parts to a service technician at the stall at which the service technician is working.

<sup>21</sup> Such testimony was subsequently corroborated by parts department employee Garcia. That Coffey did not testify as to observing service technicians going in and out of the parts department is of no moment given his testimony with respect to frequently observing multiple service technicians already present in the parts department when Coffey visited the parts department.

three of the first bullet points listed under essential duties. The back-counterperson job description introduced by the Employer also references the interactions between back counterpersons and service technicians. Most importantly, the Employer's parts specialist job posting and job description note that parts specialists are responsible for assisting service technicians in determining the replacement parts required, a factor reinforced by Miller's testimony regarding service technicians and parts employees reviewing parts diagrams together in order to mutually assess the proper part.<sup>22 23</sup>

On the bases stated above, I find that the factor of contact between service technicians and service part specialists strongly favors a finding of community of interest in this case. However, the application of this factor in favor of the Petitioner's position is undermined by the lack of evidence of regular contact between the other parts department employees and the service technicians.

#### Commonality of Wages, Hours and Working Conditions

As noted above, certain of the parts department employees are paid on an hourly basis with no opportunity for commissions. However, the retail parts specialists receive commissions on retail sales of parts, and the wholesale parts employees receive commissions on wholesale sales of parts, as reflected in the employee paystubs in the record. Given the opportunity of most parts employees to obtain commissions and the opportunity for service technicians to obtain additional pay through working quickly under the flat rate system, I do not find there to be a material difference in pay structures as between the service technicians and parts employees. See *Indianapolis Mack Sales and Service, Inc.*, 288 NLRB 1123, 1125 (1988) (community of interest between parts and service employees notwithstanding differences in bonus calculations as between each group); *Hanna Motor Company*, 94 NLRB 105, 107 (1951) (community of interest existed where parts employees although paid in different manner than service department employees received approximately same pay as most service department employees).

The Employer offers several benefit programs, all of which are uniformly available to the petitioned-for employees and the existing unit employees. These include health insurance coverage, dental coverage, life insurance, a 401(k) plan, as well as vacation benefits.<sup>24</sup> All employees, both the existing unit service technicians and the petitioned-for parts employees, are subject to the same safety policies, attendance policies, disciplinary policies, overtime

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<sup>22</sup> Consistent with Miller's testimony, service technician Coffey and front counter retail parts specialist Eric Garcia also testified about service technicians visiting the parts department or parts department employees visiting the service department to collaboratively review parts diagrams.

<sup>23</sup> While Miller testified that shipping and receiving clerks do not interact with service technicians, I note that the job description for shipping and receiving clerks introduced by the Employer states to the contrary that shipping and receiving clerks pull and deliver parts to service technicians when necessary. However, none of the other job functions listed in the shipping and receiving job description appear to require interacting with service technicians.

<sup>24</sup> The same holidays are established for the service technicians as for the parts department employees who are paid on an hourly basis whereas different holidays are in effect for commissioned parts personnel such as the retail parts specialists.

policies, scheduling policies, leave of absence policies, performance evaluation policies, and employee handbook.

The parts department employees and service technicians are part of separate departmental email distribution lists. While all employees use the same ADP type of time clock, employees are required by Employer policy to use the time clock nearest their workstation and supervisors, which results in parts employees using different time clocks than service technicians. There is one single lunchroom/breakroom at each of the Employer's three facilities and such lunchrooms are used by employees in all job classifications without any restriction, although most employees use the lunch or break rooms closest to their normal work stations. All employees, both parts department and service technicians, use the same joint employee parking lot to park their personal vehicles while at work. *Indianapolis Mack*, supra, 288 NLRB at 1126 (community of interest found where parts and service employees used same entrances, ate in same lunchrooms, and parked in same parking lots).

The parts department employees wear Aramark pants and navy blue polo shirts with a Lexus logo, each of which are provided by the Employer. The service technicians also wear the same Employer-provided Aramark pants as worn by the parts employees, along with jerseys branded with a Lexus platinum and black stripe and Lexus patch. Thus, both the parts employees and the service technicians wear the same pants, and all wear some form of Lexus logo or insignia.

With the above factors in mind, I find that the commonality of wages, hours and working conditions as between the service technicians and the parts department employees supports the existence of a community of interest between the unit service technicians and the petitioned-for parts department employees.

#### Bargaining History

While the record contains the Agreement applicable to the service technician unit, there was no evidence in the record with respect to the overall duration of the bargaining relationship between the Petitioner and the Employer. However, I take administrative notice, based on the Region's records, that on July 18, 2008, the Region issued a Certification of Representative for the following unit to be represented by the Petitioner:

All full-time and regular part-time technicians, including lube technicians, employed by the Employer at its Santa Clara, California [facility] excluding all managerial and administrative employees, service writers, parts employees, salespersons, office clerical employees, guards, and supervisors as defined in the Act.

There is no evidence in the record that the composition of the bargaining unit has changed since its original recognition or certification. I have also considered that there is no evidence of a history of collective-bargaining for parts employees in a different unit and that no union seeks to represent them separately or in a different unit. Contrary to any contention

that the Petitioner failed to bargain about the inclusion of the parts employees in the existing bargaining unit or should have done so prior to filing this petition, the Board has held that a self-determination election is the proper method by which an incumbent union, such as the Petitioner here, may add unrepresented employees to its existing unit. *Warner-Lambert Company*, supra, at 995. I therefore find that this factor does not weigh for or against finding the petitioned-for voting group to be appropriate.

#### Centralized Control of Labor Relations

Neither party introduced evidence specifically directed to the centralized control of labor relations. The only evidence in this regard was testimony by Vice President and General Manager Miller that the Employer's human resources department was located at its main Stevens Creek retail sales facility. However, given that the Employer did not introduce any evidence suggesting any separation with respect to control of labor relations as between the existing service technicians and the petitioned-for parts employees, I assume *arguendo* that centralized control of labor relations exists in this case.

After examining the record as a whole and weighing the factors above, I find that only the factors of centralized control of labor relations, commonality of working conditions, and functional integration fully support Petitioner's position with respect to the alleged community of interest between the parts department employees and the service technicians. While the contact between employees factor could have favored Petitioner's position, such contact has only been established as between the service technicians and the service part specialists, not as between the service technicians and the other parts department employees. Other applicable factors, including the absence of interchange, separate supervision, distinct skills and qualifications, and distinct functions, all together, strongly militate against the conclusion that a community of interest exists. Finally, other applicable factors such as bargaining history, employee compensation, and employee shifts and schedules are neutral factors at best.<sup>25</sup> In reaching my conclusion here, I note the existence of prior Board cases finding service department employees to lack a community of interest with parts employees under similar circumstances. See, e.g., *B.B. Burns Co., Inc.*, 85 NLRB 1025, 1027 (1949) (excluding parts employees where separately supervised from service department, parts employees did not engage in installation

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<sup>25</sup> While I have accepted the Employer's argument with respect to the lack of a sufficient community of interest between all petitioned-for parts employees and the existing service technicians unit, I nevertheless find unavailing the Employer's argument that it is inappropriate to include the parts employees in a unit with the service technicians because Petitioner does not also seek to include the service advisors in the unit. Initially, the Employer did not preserve the right to make such an argument by including it in its pre-hearing Statement of Position. I also note the Employer's consistent objection at hearing with respect to the admission of evidence about service advisors. Further, I note that there is no evidence in the record regarding whether the original service technician unit was organized as a craft unit, nor evidence sufficient to establish the basic criteria for a craft unit, such as the level of training, certification, specialization and/or expertise of the service technicians employed by the Employer. That aside, however, the craft unit cases on which the Employer relies, namely *Dodge City of Wauwatosa*, 282 NLRB 459 (1986); and *Fletcher Jones Chevrolet*, 300 NLRB 875 (1990), address a situation not involved here of a union petitioning to exclusively represent a craft unit, i.e., an incipient organizing campaign far different from an established unit seeking to expand through an *Armour-Globe* election.



of parts, and parts employees were mainly engaged in sales functions on both a retail and wholesale basis); *Diamond T. Utah, Inc.*, 124 NLRB 966 (1959) (excluding parts employees from a service unit where parts employees did not exercise similar automotive skills or possess same mechanical abilities as mechanics).<sup>26</sup>

## CONCLUSIONS AND FINDINGS

I have carefully weighed the record evidence and the arguments of the parties, and I conclude that it is appropriate to hold an election among the employees in a separate unit. Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of Section 2(6), (7), and (14) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>27</sup>

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time retail parts specialists, back counter specialists, wholesale parts specialists, parts drivers, and shipping and receiving clerks employed by the Employer at its facilities located at 300 Martin Avenue, Santa Clara, California, and 1500 Coleman Avenue, Santa Clara, California;

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<sup>26</sup> Petitioner's citation to *Jensen's Motorcycle, Inc., d/b/a Honda of San Diego*, 254 NLRB 1248, 1263 (1981) is unavailing insofar as in that case no party disputed the community of interest between the parts department employees and service department employees, with the only issue being whether a community of interest existed as between service and parts employees in the automobile department and the service and parts employees in the motorcycle department.

<sup>27</sup> The parties stipulated that the Employer, a California corporation with places of business located in Pleasanton, California; Livermore, California; and Dublin, California, provides health care and that during the last 12 months preceding the hearing, the Employer derived annual gross revenues in excess of \$250,000, and during that same period purchased and received goods valued in excess of \$5,000 which originated outside the State of California.

Excluded: Employees represented by a labor organization, office clerical employees, guards, and supervisors as defined in the National Labor Relations Act.

### **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above.

Included: All full-time and regular part-time retail parts specialists, back counter specialists, wholesale parts specialists, parts drivers, and shipping and receiving clerks employed by the Employer at its facilities located at 300 Martin Avenue, Santa Clara, California, and 1500 Coleman Avenue, Santa Clara, California;

Excluded: Employees represented by a labor organization, office clerical employees, guards, and supervisors as defined in the National Labor Relations Act.

The ballot will ask:

Do you wish to be represented for purposes of collective bargaining by Machinists Automotive Trades, Local 1101, District Lodge 190?

#### **A. Election Details**

The election will be held on Wednesday, November 13, 2019, from 11:30 a.m. to 12:30 p.m. at the Employer's Training Room, located at 1500 Coleman Avenue, Santa Clara, California.

#### **B. Voting Eligibility**

Eligible to vote are those in the unit who were employed during the payroll period ending October 27, 2019, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3)

employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

### **C. Voter List**

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **Friday, November 1, 2019**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

### **D. Posting of Notices of Election**

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer

customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

### **RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated at Oakland, California this 30<sup>th</sup> day of October 2019

/s/ Valerie Hardy-Mahoney

Valerie Hardy-Mahoney  
Regional Director  
National Labor Relations Board  
Region 32  
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